# Crime DA

#### Chilling Effect – Qualified immunity prevents frivolous lawsuits that deter police action, threatening public safety

Rosen 05**[[1]](#footnote-1)**

It is hard to deny that **the more time police officers spend at trial** defending their conduct, **the less time they spend patrolling the streets, the more money their departments expend in their defense, and the more frequently the officers will second-guess certain behaviors in the heat of the moment**. These drawbacks may well be justified for the sake of society's prevention of tortious and unreasonable conduct on the part of law enforcement agents. Nevertheless, **police agencies, Supreme Court justices, and** some **scholars highlight the important role that qualified immunity can play in reduc[e]**ing **unnecessary costs and in improv [e]**ing **deterrence of crime**. In its amicus brief in support of the Saucier petitioner, NAPO addressed several concerns related to costs and deterrence.47 It began by asserting that **officers** **currently face too many lawsuits related to their conduct**, **litigation** that generally **is resolved in their favor and** therefore **wastes taxpayer time and money**. It pointed to **an "ever increasing number of lawsuits against law enforcement officers"** and **the threat that increase poses to the general public interest**.49 **The increased threat of lawsuits**, according to this argument, **deters effective police performance, thereby diminishing public safety**:o NAPO referred to Justice Scalia's assertion in Anderson v. Creighton5l that permitting frivolous lawsuits against law enforcement to go to trial "entaiHs] substantial social costs, including the risk that **fear of personal** monetary **liability** **and harassing litigation will** unduly **inhibit officials in the discharge of their duties**."·2 Several scholars echo NAPO's concerns. Richard Fallon and Daniel Meltzer describe the fears of the Supreme Court in Harlow v. Fitzgerald,53 explaining that such **litigation** works its evils by **deter**ring **officers through** the **threat of personal liabilit**y. Barbara Armacost notes that **such liability begets poor law enforcemen**t, **which** in turn **harms the** very **people the officers are sworn to protect**. 54 The chief of the Federal Bureau of Investigation Academy's Legal Instruction Unit echoes these sentiments. 55 Thus, at least in theory, **the proliferation of lawsuits appears to involve serious risks to agents as well as the public**. Of course, this entire edifice hangs on the assumption that law enforcement agents regularly face personal liability for their conduct when acting under color of law. Fallon and Meltzer challenge this premise. 57 They contend that in most situations, the police department and/or the officers' union make use of a legal defense fund while the officer need not expend a penny of his or her own.58 Thus, Fallon and Meltzer contend that the entire policy argument rests on a false assumption. Nonetheless, **despite the unlikelihood of an officer facing personal liability, frivolous litigation imposes serious secondary costs on his or her conduct**. **First, contributions or premiums paid to a legal defense insurance plan will likely increase with the amount of litigation the officer faces. Second, the officer's career may endure a stain or stigma despite a victory on the merits of an excessive force case. Third, the department**, as the officer's employer, **may impose discipline**, whether formal or informal, **on** any **officer's involvement in litigation**, whether successful or unsuccessful. **Suspensions or unpaid leave may accompany lawsuits faced even by officers who are ultimately victorious in court. Thus, litigation indeed affects officers' conduct, in the heat of the moment**, whether reasonably or not.59 This effect dovetails with a growing tendency toward "depolicing" that has become prevalent in several of America's urban cores.60 According to many officers, **recent years have seen an increase in lawsuits and informal complaints brought against law enforcement, a correlate tendency in departments to steer officers away from necessarily risky conduct** in do-ordie situations, and a concomitant decline in officer morale. 61 In 1981 in the State of California,"2 residents placed 8,686 complaints against peace officers, of which 1,552 or 18% were ultimately sustained.63 In 2000, Californians recorded 23,395 complaints, of which 2,395 or 10% were sustained. 64 **This ballooning of claims - in particular unsuccessful ones** - **is** as **troubling** as it is dramatic. The Oakland, California, **Citizens Police Review Board** ("CPRB") **embodies this deterrent effect**.66 This board provides an independent forum in which aggrieved citizens can register their complaints about police conduct. 67 At the same time, Detective Jesse H. Grant, who has had personal experience appearing before the CPRB, notes that **complaints, more than 80% of which were not sustained in 2002, impose a serious deterrent effect on police conduct.** 68 **Officers now more than ever think twice and act conservatively - although not necessarily safely - when engaged in violent altercations with or apprehensions of dangerous suspects**. 69 Ironically, the presence of entities like the CPRB undermines the justification for excessive force lawsuits to begin with: by providing an avenue for voicing grievances over police conduct, such boards obviate some of the need for civil actions. Moreover, **they reflect the deterrent effect that wide-open public access to disciplinary bodies can breed**. Thus, **there exist significant reasons for the courts to grant** some kind of **immunity to law enforcement** officials **in order to ensure the contin- ued quality of their work**. By increasing the threat of litigation, **frivolous lawsuits** can serve to **deter officers' reasonable conduct**, thus **imperiling public safety and upending the delicate balance society seeks between forcefully fighting crime and respectfully treating all citizens.**

#### Police disengagement causes massive spikes in crime that kill far more people than the police themselves

Mac Donald 16**[[2]](#footnote-2)**

The most controversial aspect of my new book, “The War on Cops,” is my claim that **violent crime is up** in many American cities **because officers are backing off of proactive policing**. I have dubbed this double phenomenon of de-policing and the resulting crime increase the “Ferguson effect,” picking up on a phrase first used by St. Louis’s police chief. **Violence began increasing in the second half of 2014, after two decades of decline**. The Major Cities Chiefs Association convened an emergency session in August 2015 to discuss the double-digit surge in violent felonies besetting its member police departments. The violence continued into fall 2015, prompting Attorney General Loretta Lynch to summon more than 100 police chiefs, mayors and federal prosecutors in another emergency meeting to strategize over the rising homicide rates. Arrests, summonses and pedestrian stops were dropping in many cities, where data on such police activity were available. Arrests in St. Louis City and County, for example, fell by a third after the shooting of Michael Brown. **Misdemeanor drug arrests fell by two-thirds** in Baltimore through November 2015. Chicago Mayor Rahm Emanuel told Lynch that his **officers were going “fetal”: “They have pulled back from the ability to interdict,” he said. “They don’t want** to be a news story themselves, they don’t want **their career ended early**, and it’s having an impact.” 2015 closed with a 17 percent increase in homicides in the 56 largest cities, a nearly unprecedented one-year spike. **Twelve cities with large black populations saw murders rise anywhere from 54 percent in the case of the District to 90 percent in Cleveland**. Baltimore’s per capita murder rate was the highest in its history in 2015. Robberies also surged in the 81 largest cities in the 12 months after the shooting of Michael Brown in Ferguson, Mo. In the first quarter of 2016, homicides were up 9 percent and non-fatal shootings up 21 percent in 63 large cities, according to a Major Cities Chiefs Association survey. **Chicago is a prime example of the Ferguson effect. Stops were down nearly 90 percent in the first part of this year compared with last year. Shootings citywide** through July 17 **were up 50 percent** compared with the same period in 2015; shootings were up 87 percent compared with the same period in 2014. In Austin, on the West Side, shootings are up 220 percent compared with 2014. Through July 19, 2,234 people have been shot in the city, averaging one an hour during some weekends. Yesterday, a 6-year-old girl was seriously wounded in her abdomen while sitting on her porch, when a violent shoot-out between three cars broke out; she is one of at least 21 children younger than 13 shot so far this year, including a 3-year-old boy shot on Father’s Day who is now paralyzed for life. (One would have assumed, pursuant to the Black Lives Matter narrative, that racist cops were responsible for a significant portion of those shootings, given that their victims have been overwhelmingly black. In fact, Chicago cops shot 11 people, all armed and dangerous, through July 19, comprising 0.5 percent of all shootings.) **This crime increase**, I argue, **is due to officers’ reluctance to engage in precisely the proactive policing that has come under** relentless **attack** as racist. For the past two years, activists, academics, the press and many politicians have charged that pedestrian stops and low-level public order enforcement (also known as “broken windows” policing) are little more than biased oppression of minority citizens. That political message is accompanied by increasing tension on the street, inflamed by the persistent allegation that racist officers are the biggest threat facing young black males today. A garden-variety Black Lives Matter march that I attended last November on Fifth Avenue in New York featured “F–––the Police,” “Murderer Cops” and “Racism Is the Disease, Revolution Is the Cure” T-shirts as well as “Stop Police Terror” signs. Officers working in urban areas are now routinely surrounded by angry crowds when they question a suspect or make an arrest. “In my 19 years in law enforcement, I haven’t seen this kind of hatred towards the police,” a Chicago cop who works on the South Side told me in May. “People want to fight you. ‘F––– the police. We don’t have to listen,’ they say.” A police officer in Los Angeles’s Newton Division reports: “Our officers are getting surrounded, cursed and jeered at every time they put handcuffs on someone.” Officers continue to rush to crime scenes after someone has already been victimized, sometimes getting shot at in the process. But **in that large area of discretionary policing that aims to prevent crime before it occurs** — getting out of a squad car at 1 a.m., for example, to question someone who appears to have a gun or may be casing a target — **many officers are deciding to drive on by rather than risk a volatile,** potentially career-ending **confrontation that they are under no obligation to instigate**. “Every cop today is thinking: ‘If this stop goes bad, I’m in the mix,’ ” says Lou Turco, president of the Lieutenants Benevolent Association in New York City. An officer in South Central Los Angeles described the views of his fellow cops: “Guys and gals in coffee shops are saying to each other: ‘If you get out of your car, you’re crazy, unless there’s a radio call.’ ” That **officers would lessen their discretionary engagement under this barrage of criticism** and hatred **is** both understandable and **inevitabl**e. Policing is political. **If a powerful segment of society sends the message that proactive policing is bigoted, the cops will eventually do less of it**. This is not unprofessional conduct; it is how the calibration of police legitimacy is supposed to work. Cops, moreover, are human. In a speech last October at the University of Chicago law school, FBI Director James Comey said that officers in one big city precinct had recounted being surrounded and taunted from the moment they made a pedestrian stop. “’We feel like we’re under siege, and we don’t feel much like getting out of our cars,’ ” they told him. Under such conditions, it is not surprising that proactive policing is down. Remember, such policing is discretionary. Cops don’t have to do it. And they have been told not to do it by activists and the media, who accuse them of racism for making stops in high-crime areas. The only surprise is that many of those same activists are now accusing the cops of not “doing their job,” as a result of which “people are dying,” in the words of Black Lives Matter activist Shaun King. This is the same King who launched a petition in 2014 demanding that Attorney General Eric Holder “meet with local black and brown youth across the country” who were being oppressed by “broken windows” policing and pedestrian stops. **The connection between de-policing and crime increases has been documented before. A 2005 study of de-policing** after the anti-cop riots in Cincinnati in 2001 by University of Washington economist Lan Shi, for example, **found a significant increase in felony crime caused by the drop-off in officer engagement**. Acknowledging the connection between de-policing and crime is unacceptable, however, to those who reject the idea that data-driven, proactive policing can lower crime. To be sure, no one has conducted randomly controlled experiments to confirm that the current crime spike in urban areas is the result of officers reverting to a reactive style of policing. But no other explanation fits the timing of the post-Ferguson crime increase. As Comey said last October, **de-policing “is the one explanation that does explain the calendar and the map** and that makes the most sense to me.” University of Missouri, St. Louis, criminologist Richard Rosenfeld reached the same conclusion in a study of the post-Ferguson crime increase for the Justice Department: “**The only explanation that gets the timing right is a version of the Ferguson effect**,” he told the Guardian in May. **The** **crime increase is real, driven by officer disengagement, and is resulting in more black lives being lost.**

#### This turns case – increasing crime rates kills prison reform

Willick 15**[[3]](#footnote-3)**

We aren’t criminologists at Via Meadia, so we won’t wade into the fierce debate about whether or not the “Ferguson effect” is real. In any case, focusing tightly on the relationship between crime and the protests over the deaths of Michael Brown, Eric Garner, and Freddie Gray strikes us as too narrow an approach. Even as these protests gained a lot traction this past year, **the** **public had already begun to turn against many of the harsher elements of the U.S. criminal justice system**, from stop-and-frisk to draconian prison sentences. Many state and local governments—including some of the ones mentioned in the Times story—have been scaling back certain tough-on-crime policies for the last several years. Theories about the sources of the 2015 crime boomlet abound, but we wouldn’t be surprised if changes in criminal justice policy have played a role, at least in some cities. It may well be the case that the nationwide crime crackdown that began in the 1970s—as destructive as it was for many communities—really did help keep a lid on the crime rate. And it may well be that the steps taken toward reform in states like California—as salutary as they may be, overall, as a matter of policy—have caused urban crime to rise somewhat. For the purposes of public opinion, however, it may not matter whether the statistics in the Times article can be traced to the ‘Ferguson effect,’ changing prison policies, the availability of guns, or simple random variation. As we’ve written before, **this is America’s prison reform moment. Politicians on both sides are united around the moral and fiscal imperative of curbing mass incarceration**—and in particular, **enacting more charitable policies** toward drug and other nonviolent offenders. **However, we only got here because the country has enjoyed** historically low—and **steadily falling**—**crime rates** for the past decade. **If** **the latest crime boomlet turns into a boom, the criminal justice reform consensus could evaporate in a heartbeat**—no matter what the source of the boom may be. Posted: Sep 2, 2015 9:11 AM

1. A Qualified Defense: In Support of the Doctrine of Qualified Immunity in Excessive Force Cases, With Some Suggestions for its Improvement” Golden Gate University Law Review Volume 35 | Issue 2 Article 2, 2005 [↑](#footnote-ref-1)
2. Fellow at the Manhattan Institute “The Ferguson effect”, Washington Post 201 [↑](#footnote-ref-2)
3. “Violent Crime Wave Could Swamp Prison Reform”, American Interest 2015 [↑](#footnote-ref-3)